Ethics Brief

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Topics

- **Overview and Organizational Perspective**
- **Annual Ethics Training Requirements**
- **Conflicts of Interest**
- **Gifts**
- **Non-Federal Entities**
- **Political Activities**
- **Professional Communication**

Annual Ethics Training (AET) Requirements

CRIMINAL RULES

- **BRIBERY.** **Actual** **Corruption is the core.**
- **CONFLICT OF INTEREST LAWS** **Prevent acts that** **appear** **corrupt.**

ADMINISTRATIVE RULES

- **14 ETHICAL PRINCIPLES** **establish ethic values/goals for Federal employees; can be basis for discipline**
- **EXECUTIVE BRANCH STANDARDS OF CONDUCT** **implement Ethics in Government Act & criminal statutes; prevent actual and apparent conflicts.**
- **DoD SUPPLEMENTAL ETHICS REGULATION** **imposes additional limits and restrictions on the Standards for DoD personnel.**

AET: Criminal Ethics Laws

Criminal Ethics Laws 18 USC § 201 – 209, law that govern Federal service in summary:

- **Sec 201 - Don't accept a bribe.**
- **Sec 203 & 205 - Don't give or accept money for representing another's interests before the U.S. Government.**
- **Sec 208 - Don't take official action that will affect your personal financial interests as well as those of your spouse, children and prospective employer.**
- **Sec 209 - Don't accept payment from another for the performance of your Federal duties.**

Learn from other's pain § 201

Asking for a Bribe — Have You Lost Your Mind?

The Facts: An employee at the Defense Mega Center at Kelly Air Force Base, Texas, was working as a member of a source evaluation committee reviewing contract proposals for a $5 million contract when he struck on this ingenious idea: Ask one of the potential contractors for a bribe in exchange for his approval of the contractor's proposal! The contractor apparently didn't think that this was such a good idea, however. It contacted the Defense Criminal Investigative Service, which investigated the case along with the Air Force. The investigation included using an undercover agent, parading as the contractor's representative, paying the employee the bribe. Having been caught with his hand in the cookie jar, the employee pleaded guilty to accepting a bribe and was sentenced to one year of probation and ordered to participate in a mental health program—perhaps an appropriate remedy for what proved to be a lame-brained scheme. (Source: *Federal Ethics Report*, Feb. 2001.)

The Law: 18 U.S.C. § 201(b)(2)(A) (2003) bars public officials and any persons selected to be public officials from seeking anything of value in return for "being influenced . . . in the performance of any official act." The penalty for violating this law can include fines, imprisonment for up to 15 years, or both, along with possible disqualification from holding "any office of honor, trust, or profit" with the United States Government.

Don’t do this § 203

Wanted: Employee Who Will Not Skip Meetings to Interview with Other Companies

An Army Brigadier General participated personally and substantially as an advocate and approval authority in the effort to increase funding on a task order with a Government contractor even while actively seeking employment with that company. His efforts did not rise to the level of “negotiating” employment so he did not violate the criminal prohibition of 18 U.S.C. §208, but was still in violation of C.F.R. 2635.604 when he took official action on behalf of a company with which he was seeking employment instead of disqualifying himself from the particular matter. He also extended official travel time and claimed unauthorized travel expenses in order to go to job interviews and participate in other job seeking activities to the point of actually excusing himself from official meetings. Finally, he charged unauthorized personal phone calls to the Government and ordered subordinates to run personal errands for him, including picking up his dry cleaning, driving him to the barber shop, and putting the license plates on his personal car (also directing them to use an official Government vehicle for these purposes).

The General’s behavior violated the Joint Ethics Regulation because he used Federal personnel, equipment, and duty time to conduct personal business. His official participation in a particular matter on behalf of a company with which he was seeking employment violated conflict of interest law. His other activities amounted to misuse of Government resources (his subordinates’ time and the Government car) and improper gift acceptance (due to a failure to reimburse subordinates for expenditures such as mileage used when performing his personal services). As if that was not enough of an ethical rap sheet, he violated DoD Directive 7000.14-R when he decided to charge at least 15 of his TDY transactions to his personal credit card instead of his Government travel card so that he could receive bonus point or air miles on the card.

The General was subject to Article 15 proceedings under the Uniform Code of Military Justice, fined $5,000, and directed to reimburse the Government $5,300 for the improper cell phone use and overpayment of TDY expenses. He was allowed to retire at his current grade, O-7.

Don’t forget § 205

Don’t Play Attorney Against Your Federal Employer!

The Facts: In the “off-time” from her work with the Social Security Administration, a senior attorney opened her own legal practice and represented clients with claims against that very same Administration. For her double-duty, she was sued by a U.S. Attorney and ended up agreeing to a settlement that required her to pay the United States $113,000 for this and other violations—not a typical attorney’s fee! (Source: Office of Government Ethics memorandum, Oct. 2002.)

The Law: 18 U.S.C. § 205 (2003) forbids any current Federal employee from acting as an attorney in prosecuting a claim against the United States—where this is not performed as part of his or her official duties for the Federal Government. For any such violation, the law authorizes fines and possible imprisonment—of not more than one year, unless the conduct is “willful,” in which case it can be for up to 5 years (*see* 18 U.S.C. § 216(a)).

Oops under § 208

Watch Promoting Your Business on Government Time!

The Facts: A Senior Advisor to the State Department had an interest in a business that planned to develop a theme park in the Middle East. No problem there. But the Advisor, in his official position, recommended to other State Department officials that the State Department support the enterprise. That violated the law. After a guilty plea, he was sentenced to a year of probation and ordered to perform 25 hours community service and to pay a $20,000 fine. (Source: *Federal Ethics Report*, Dec. 2000.)

The Law: 18 U.S.C. § 208 (2003) forbids any employee of the executive branch of the Federal Government from recommending in his or her official position any matter in which he or she has a financial interest. The penalty for violating this law could be a fine, a prison sentence for up to one year, or both—unless the violation is found to be "willful," in which case the maximum prison sentence increases to 5 years (*see* 18 U.S.C. § 216 (2003)).

Not in compliance with § 209

Charging Customers for Federally Funded Work — Criminal!

The Facts: An Acting Assistant Director for the San Francisco Immigration and Naturalization Service (INS) office charged one alien $950 for a file review (for which the INS does not charge), asked another alien for $300 for an unneeded INS pardon, and charged a third $250 to get a citizen application waiver that had already been approved. The Director was sentenced to serve six months in a halfway house, to be followed by six months of home detention and four years of probation, during which time he would be prohibited from acting in any capacity on immigration matters without permission of his probation officer. (Source: *Federal Ethics Report*, Feb. 2003.)

The Law: 18 U.S.C. § 209 (2003) makes it criminal for an employee of the Federal executive branch or of an independent agency of the United States from receiving any compensation for official services. For violations of this law, 18 U.S.C. § 216 (2003) authorizes fines and prison terms for up to one year—unless the conduct is willful, in which case imprisonment could be for as much as 5 years.

AET: The 14 Ethical Principles

1. **Public Trust: Put loyalty to Constitution, laws and ethical principles above private gain.**
2. **Conflicting Financial Interests: Don't hold financial interests that conflict with performance of duty.**
3. **Misuse of Nonpublic Government Information: Don't use or allow use in financial transactions or to further private interests.**
4. **Gifts: Don't solicit/accept them from "prohibited sources."**
5. **Honest Effort: Put forth in performing your duties.**
6. **Unauthorized Commitments: Don't knowingly make them or make promises purporting to bind the Government.**
7. **Using Public Office For Private Gain: Just don't.**

AET: The 14 Ethical Principles

8. **Impartiality**: Don't give preferential treatment to anyone.
9. **Federal Property**: Use only for authorized activities.
10. **Outside Employment/Activities**: Don't seek or engage in if it conflicts with official duties and responsibilities.
11. **Waste, Fraud, Abuse, Corruption**: Disclose to authorities.
12. **Meet Your Obligations**: Satisfy obligations as a citizen (e.g., pay just financial obligations imposed by law, such as taxes).
13. **Support Equal Opportunity**: in performance of duties.
14. **Appearances**: Avoid actions creating appearance of violating the laws or ethical standards, where a reasonable person with knowledge of the relevant facts would question your decision.

Public Trust

Chiefly Wasteful

A chief of maintenance and logistics at a military facility purchased, at a cost of $30,000 each, 6 forklifts designed for inside use despite the fact that the command needed lifts for outside use, even for use in inclement weather. The forklifts rusted for 8 months in an outdoor storage area. In an even more impressive display of waste, the chief purchased a $400,000 patrol boat with a bad generator that left the boat inoperative - and that went unrepaired.

The chief's actions violated Federal Acquisition Regulation 3.101-1, which sets forth the standard that transactions related to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.

The chief was removed from his position.

Conflicts of Interest

The DOD Standards of Conduct provide:

- ***Conflicting Financial Interests*. Employees must *disqualify* themselves from an official matter if that matter will affect their financial interests, unless an exception or exemption applies.**

- ***Impartiality*. Employees shall *disqualify* themselves from taking action in an official matter if a reasonable person would have a basis to question their impartiality. (AKA, THE WASHINGTON POST TEST)**

TIP: **In both cases, disqualification shall be in writing.**

Conflict of Interest

Lawyer Says Financial Disclosures Are a Nuisance, Client Gets Probation

A world-renowned Alzheimer's research scientist for the National Institutes of Health (NIH) was sentenced to serve two years of probation and four-hundred hours of community service after failing to disclose several hundred-thousand dollars in consulting fees he received for services rendered to a prohibited source — a pharmaceutical company doing business with his agency. The scientist violated a federal conflicts of interest statute and federal regulations requiring him to disclose payments from outside sources on his financial disclosure report (Form 450). The purpose of the required financial disclosure is to help employees recognize conflicting financial interests and avoid violating the law.

The scientist's lawyer said that it is common for NIH researchers not to file financial disclosures because they consider the disclosures a "bureaucratic nuisance." Maybe so, but this scientist should have known, as most world-renowned medical researchers probably do, that untreated nuisances often become debilitating illnesses. In addition to probation and four-hundred hours of community service, the scientist was also forced to forfeit the consulting fees he had received from the pharmaceutical company, and was deprived of his retirement from the government.

Gifts

- **5 C.F.R. § 2635.202(a): You may not directly or indirectly solicit or accept a gift given:**
  - **by a prohibited source; or**
  - **because of your official position.**
- **DoD Supplemental Regulation**
  - **Gifts from Outside Sources**
  - **Gifts Between Employees**
  - **Written Disqualifications**
- **EXCEPTIONS:**

  $20/50 Rule

  Widely Attended Gatherings
- **BOTTOM LINE: Call your lawyer (as soon as you know that you might be offered a gift) and keep a gift log.**

Gifts are a big problem ...

Like a Private Helicopter Ride to Work? How About a Model Ship?

The Facts: According to sworn testimony and documentation acquired by the office of a military service Inspector General, a senior military officer accepted gifts from the owner of a corporation that serviced and provided landing facilities for military aircraft. The gifts to the officer included a helicopter ride to work, a shirt with the corporation's logo, a miniature model airplane, meals at a Christmas party, and a leather jacket. The officer allegedly returned the jacket but did nothing to compensate for receipt of the other gifts, the value of which exceeded (and probably well exceeded) $100. This conduct occurred as one of a series of alleged offenses that resulted in the officer being relieved of command, issued a punitive letter of reprimand, and ordered to forfeit $1000.

The Law: 5 C.F.R. § 2635.101(b)(14) (2003) requires all Federal employees to avoid any actions that a reasonable person, who knew the relevant facts, could take to be a violation of the law—including the prohibition on providing "preferential treatment to any private organization or individual," mentioned at § 2635.101(b)(8). In this case, the value of the gifts the officer accepted could make it appear that he might influence Government contracting in favor of the corporation. To be sure, he enjoyed some neat gifts—for a time. However: "Public service is a public trust," and it requires that Federal employees place loyalty to "the laws and ethical principles above private gain" (§ 2635.101(b)(1)).

Even more directly on point, 5 C.F.R. §§ 2635.202(a) and 2635.203(d) apply the general principles mentioned above by prohibiting Federal employees from (among other things) soliciting gifts or accepting gifts—whether solicited or not—from any person who "[d]owes business or seeks to do business with the employee's agency."

There are some exceptions to these rules. 5 C.F.R. § 2635.204, for example, allows the acceptance of "unsolicited gifts having an aggregate market value of $20 or less per source per occasion," provided that the value of gifts accepted under the "$20 rule" from a single source do not amount to more than $50 in a given *calendar year*. In the case above, the officer's gifts exceeded (and probably well exceeded) this limit.

If you have received a gift or gifts and anticipate that it has put you in jeopardy of violating these, or any other, regulations, 5 C.F.R. § 2635.205 tells you what you must do — and that does not include covering it over (which might make things worse). First, if the gift is an item and not an activity like a helicopter ride, you may return it to the giver or pay the giver the fair market value (see subsection (a)(1)). If that is not practical, you may — "at the discretion of the employee's supervisor or an agency ethics official" —donate the item to an appropriate charity, share the item with your office, or destroy the item (see sub-section (a)(2)). For an activity or event, you obviously can't return the gift, but you can and must pay back the giver the market value of the gift; simply giving back something similar will *not* suffice (see sub-section (a)(3)). If an employee "on his own initiative, promptly complies with the requirements of this section" (that is, § 2635.205), and the gift was not solicited by the employee, then he or she will not be considered to have improperly received that gift.

Public Office for Private Gain

All Your Hotel Points Belong to Me

While working at the Air Force Legal Operating Agency, an official directed Air Force JAGs to stay at local hotels at a higher monetary rate when housing was available on Maxwell AFB at a much lower rate. This official used his Marriott reward points to reserve hotel rooms for visiting military personnel so that he could use his public office for private gain and collect the mileage for himself. As a result of the scheme, the official received a total of 587,282 Marriott reward points and an additional 100,000 reward points for other room arrangements.

He pled guilty and was sentenced to pay a $5,000 fine and $90,356 in restitution to the Government for defrauding the Air Force.

Non-Federal Entities (NFEs)

<u>What is an NFE</u>?

Any organization or individual other than the U.S. Government

- **Charities and not-for-profit groups**
- **Professional associations**
- **Local and state governments**
- **Spouses' clubs**
- **Commercial enterprises**

(examples: Marine Corps League, Girl Scouts, Chamber of Commerce, IBM, etc.)

NFEs

- **What NFEs want:**
  - **Government personnel (ushers, bands, color guards, security)**
  - **Government property (buildings, water bulls, etc.)**
  - **Use of our official communication systems (e-mail)**
  - **Official sanction**
  - **Your endorsement**
- **What can we give NFEs:**
  - **The JER permits a Command to provide limited logistical support to an NFE's event when the head of the DoD command or organization determines 7 factors are**

NFE Fundraisers

- The Standards of Conduct prohibit you, in your official capacity, from "actively and visibly participating in the promotion, production, or presentation of the event."
  - Exception: official speeches
  - Delivered in an official capacity on a subject matter that relates to his/her official duties when approved by appropriate authority
- Widely Attended Gatherings (WAG): if an event has been declared a WAG and that is the basis for your attendance, you participate in your **unofficial (aka personal)** capacity
  - No travel/per diem/GOV to attend the event

Just Supporting the Military

Two Service Members Posed for Pictures at Political Event

Two service members made a faux pas when local political leaders invited them to attend a "Lincoln Birthday dinner." Under the guise that their invitations to the fundraiser were in honor of their service in Iraq, both service members attended the seemingly harmless event. They soon found themselves in the spotlight, however, when called on stage and presented with a U.S. flag. Although neither spoke at the function, their presence was a clever tactic for special "photo opportunities" used to show military support of the campaign. Posted on the local party's website, the presentation photos violated regulations that prohibit active duty service members from attending political events as official representatives of the Armed Forces.

Regulations stipulate that service members should avoid **any** activity that people may view as associating the Department of Defense (DoD) directly or indirectly with a partisan political event. DoD does permit unofficial attendance at such events but only so long as the attendee is a spectator, **not in uniform**.

Upon discovering the photos, one of the service members immediately took action to remove the photos and alert his chain of command. Because of these actions, and in light of the fact that the party apparently lured them to the event under false pretenses, the two service members received only counseling.

(DoD Inspector General)

Political Activities

Active Duty

DoD Directive 1344.10

- "Any activity that may be reasonably viewed as directly or indirectly associating the Department of Defense … or any component … with a partisan political activity or is otherwise contrary to the spirit or intention of this Directive shall be avoided." Para. 4.1.5

SES Employee

Hatch Act

- Limits the political activities of federal employees, allowing most federal employees to participate in most partisan political activities while off duty only.

Political Activities

Allowed:

- **Monetary contributions to political organizations**
- **Normal-sized bumper sticker on POV**
- **Attend partisan political rally, debate, or activity when not in uniform and when no appearance of sponsorship can reasonably be drawn**

Prohibited:

- **Participate in partisan political fundraising activities**
- **Speak before a partisan political gathering**
- **Display partisan political sign at military**

Appearance problems ...

DoD GS-12 Removed for Misuse of Authority

A GS-12 Recreation Program Manager who supervised approximately 75 civilian and military subordinates was removed from his position for several ethical violations, including the failure to avoid the appearance of impropriety. The employee moved into visitors' quarters on a military installation where he stayed for six months without paying full price for his room by pressuring his subordinate to acquiesce to his payment arrangements. He also authorized an employee to make a $400 agency expenditure to purchase workout clothing for one MWR fitness instructor. The employee had no reason to believe he had the authority to authorize this expenditure and should have made inquiry before giving authorization.

The administrative law judge stated that this act "at the very least gives the appearance of impropriety and should have raised a red flag."

ALLEGATIONS can be reality

Questions?

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